

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

2004 JUN 21 A 11:54

STEVEN JOHNSON)	U.S. DISTRICT COURT DISTRICT OF MASS.
)	
Plaintiff,)	
)	
v.)	Civil Action No. 04-10902 (PBS)
)	
)	JURY TRIAL DEMANDED
CONTINENTAL AIRLINES, INC.)	
)	
Defendant.)	
)	

**PLAINTIFF'S MOTION TO COMPEL DEFENDANT
TO ANSWER PLAINTIFF'S AMENDED COMPLAINT**

Plaintiff, Stevan Johnson (“Johnson” or “Plaintiff”), pursuant to Fed. R. Civ. P. 12(a)(1)(A), hereby moves the Court to Compel Defendant, Continental Airlines, Inc. (“Continental” or “Defendant”) to Answer Plaintiff’s Amended Complaint and respectfully shows the Court the following:

Introductory Statement

Defendant was properly served with summons and complaint in the above-referenced civil action on May 10, 2004 via the United States Postal Service. However, in an attempt to avoid answering Plaintiff’s Amended Complaint Defendant has filed a frivolous motion seeking dismissal of the complaint pursuant to Fed. R. Civ. P. 12(b)(6) as well as equitable relief.

Argument

On June 14, 2004 Defendant filed a frivolous motion seeking dismissal of Plaintiff's claims in Plaintiff's Amended Complaint. Defendant alleges in its preliminary statement of Defendant's Motion to Dismiss or, Alternatively, for Summary Judgment and Request for Equitable Relief ("Defendant's Motion") that "Johnson's complaint is nearly identical to the complaint he filed in this Court on October 15, 2003."¹ With that caveat in mind and this Court's clear indication to the Defendant on January 5, 2004 that a motion to dismiss would not be granted on 12(b)(6) grounds undeniably gives Continental constructive knowledge that Plaintiff has stated a claim upon which relief may be granted.

Therefore with Defendant knowing that a claim was stated in the "nearly identical...complaint," then Continental knows that Plaintiff has satisfied the threshold pleading standard to survive a Rule 12(b)(6) motion to dismiss in Plaintiff's "nearly identical" re-filed complaint. Therefore, by law Continental is required to serve an answer on Plaintiff within the time allowed for such service.

Continental's frivolous 12(b)(6) motion is no more than a ploy to request from this Court equitable relief without the Plaintiff having the benefit of any admissions by the Defendant on file. The equitable relief Defendant has requested if made as a stand-alone motion would require Continental to answer Plaintiff's Amended Compliant within the time allowed by law or face a possible default judgment entered against it and in favor of the Plaintiff.

¹

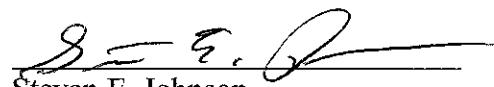
The compliant was actually filed on October 14, 2003.

Plaintiff alleges that Defendant has presented Its' Rule 12 (b)(6) motion to the Court for the improper purpose of prejudicing Plaintiff in the prosecution of his complaint in violation of Fed. R. Civ. P. 11 (b)(1)(2).

Conclusion

For the reason above Plaintiff request this Court to compel Defendant to file an Answer with this Court forthwith.

Respectfully Submitted,



Stevan E. Johnson
P.O. Box 121
Boston, Ma 02117

PRO SE

LOCAL RULE 7.1 STATEMENT

Pursuant to Local Civil Rule 7.1, Plaintiff, Stevan Johnson, hereby certifies that he conferred with counsel of record for Defendant, Continental Airlines, Inc., prior to filing Plaintiff's Motion.

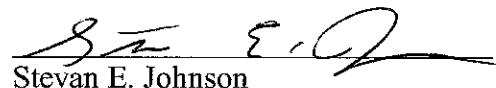


Stevan E. Johnson
Pro Se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true copy of the above document was served upon the attorney of record for Defendant, Continental Airlines, Inc., by depositing same in the United States Mail, First Class, on this the 18th, day of June, 2004 and addressed as follows:

Epstein, Becker, & Green, P.C.
Attn: David S. Rubin, Esq.
111 Huntington Avenue
Boston, MA 02199



Stevan E. Johnson

Pro Se

CIVIL ACTION NO. 04 cv 10902 (PBS)

UNITED STATES POSTAL SERVICE CERTIFICATE OF MAILING

U.S. POSTAL SERVICE		CERTIFICATE OF MAILING	
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT			
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<u>Steven E Johnson</u>		 UNITED STATES POSTAL SERVICE	
<u>P. O. Box 121</u>			
<u>Boston, MA 02117</u>			
One piece of ordinary mail addressed to:			
<u>Epstein, Becker, & Green, P.C.</u> <u>Attn: David S. Rubin, Esq.</u> <u>111 Huntington Avenue</u> <u>Boston, MA 02199</u>			
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